

REMARKS/ARGUMENTS

Claims 53-68, 72, 73, 77, 78, 81 and 82 are active in this application. Support for the amendment to Claim 59, 62 is found in the specification on pages 23-25. No new matter is added by these amendments.

Applicants acknowledge the Examiner's determination that Claims 70, 71 and 73-80 are drawn to an independent or distinct invention. Accordingly, Applicants have canceled Claims 70, 71 and 74-76 and reserve their right to file these claims in a divisional application. However, with respect to Claims 73, 77 and 78 Applicants request that upon finding that the elected claims allowable, these dependent non-elected process claims be rejoined according to M.P.E.P. § 821.04.

The rejection of Claims 59, 63, 64, 81 and 82 under 35 U.S.C. § 112, first paragraph, is respectfully traversed.

Claim 59 is directed to an isolated polynucleotide hybridizing under stringent conditions (defined in the claim) and encoding a protein that inhibits lysine production in the bacterial cell. Applicants again point the Examiner's attention to the "Synopsis of Application of Written Description Guidelines" submitted and discussed in Applicants' previous amendment. In particular, Applicants ask the Examiner to revisit the discussion in Example 9 of those Guidelines and recognize the similarity between that Example and the invention claimed in Claim 59. Since the Patent Office's own guidelines indicate that a Claim 59-type claim is adequately described, Claim 59, itself, must be adequately described. As a result, as this rejection applies to Claim 59, the rejection should be withdrawn.

In Claims 63 and 64 the polynucleotide "consists of" consecutive nucleotides of SEQ ID NO:1. However, the only basis for this rejection is the inclusion of hybridization conditions and the word "comprises" (page 3 of the Office Action). Neither Claims 63 nor 64 include such language and consecutive nucleotides of a described sequence is undoubtedly

described in the application. Therefore, as the rejection applies to Claims 63 and 64, it should be withdrawn.

Finally, Claims 81 and 82 are rejected for allegedly failing to describe the complement of SEQ ID NO:1 or nucleotides 201 to 1109 of SEQ ID NO:1. Provided with one strand of the sequence, it is unequivocal that one knows that the complement of the sequence is also described. The simple fact of nucleotide base pairing is so well-known but note that A pairs with T and G pairs with C and that the strands run in opposite directions, i.e., 5' to 3', in a double-stranded polynucleotide. Therefore, Claims 81 and 82 which claim the complements of SEQ ID NO:1 or a part thereof, are described in this application.

In light of the above, Applicants request that the rejection under 35 U.S.C. § 112, first paragraph be withdrawn.

The rejection of Claim 59 under 35 U.S.C. § 112, first paragraph is untenable for the following reasons.

The Office has taken the position that it would require undue experimentation to identify polynucleotides which hybridize under the stringent conditions in Claim 59 such that they would encode a protein having the requisite activity as stated in the claim. Applicants disagree.

The Office has conceded that molecular biology techniques and genetic manipulation are well known in the art (page 4 of the Office Action). The specification describes the sequences and their activity to inhibit lysine production in bacterial cell which can easily be measured by a routine assay (pages 23-25). Furthermore, the specification, and the claim, recites, the conditions for stringent hybridization. As a result, it would not constitute undue experimentation to make and/or use the polynucleotides of Claim 59. Withdrawal of the rejection under 35 U.S.C. § 112, first paragraph is requested.

To the rejection of Claims 68, 69 and 72, Applicants direct the Examiner's attention to page 6, paragraph 2 of Applicants' previous response in which the requisite statement was made. In any case, Applicants again confirm that the plasmid identified in Claims 68 and 72 and specifically identified in the specification has been deposited under the terms of the Budapest Treaty (confirmation of which was submitted to the Office on July 13, 2001—Deposit receipt of DSM 13616). In addition, Applicants confirm that all restrictions will be irrevocably and without restriction or condition released to the public upon the issuance of a patent on this application.

Withdrawal of this ground of rejection is requested.

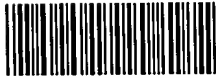
The rejection of Claims 53-62 under 35 U.S.C. § 112, second paragraph are addressed by amendment.

The objection to Claim 72 is obviated by the cancellation of Claim 69. The objection to Claim 82 is addressed by amendment.

Applicants submit that the present application is now ready for allowance. Early notification of such allowance is requested.

Respectfully submitted,

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A handwritten signature in black ink, appearing to read 'JP Lavalleye', written over a horizontal line.

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